

Special Guardianship Quick Guide

In some circumstances, children are not able to live with their parents and have to be cared for by someone else. It has been recognised by the Government, that there needs to be a legal status for children offering greater long-term security than long-term fostering but, without the severance from their birth family which arises when an adoption order is made. The Adoption and Children Act 2002 was therefore introduced, providing the legal framework for special guardianship under the Children Act 1989.

What is a Special Guardianship order?

A special guardianship order can be made when it is intended that a child should live permanently with carers who are not their parents, often relatives or family friends. The order appoints the carer to be the child's "Special Guardian." Special guardians will be given parental responsibility for the child and will have this until the child reaches 18 years of age (unless the order is discharged before then).

Subject to any other order in force relating to a child under the Children Act 1989, parental responsibility can be exercised to the exclusion of any other person with parental responsibility, apart from another special guardian. This means that special guardians can make important decisions concerning the child and are not required to consult with the child's parents. There are some important exceptions to this relating, for example;

- (a) Situations where the law requires the consent of all persons with parental responsibility in a matter affecting the child e.g. sterilisation, circumcision.
- (b) Any rights which a parent of the child has in relation to the child's adoption or placement for adoption.
- (c) The requirement for either the written consent of every person with parental responsibility or leave of the court before:
 - (i) causing the child to be known by a new surname;
 - (ii) removing the child from the UK for a period of more than three months;

- (iii) Where there is an adoption placement order in force, in which case the special guardian's exercise of parental responsibility may be restricted by the adoption agency.
- (iv) A Local Authority's ability to determine the extent to which a special guardian may meet their parental responsibility for the child in cases where a care order is subsequently made.
- (v) The special guardian has the right to make decisions about the child's day-to-day care. A special guardianship order does not remove a parent's parental responsibility for the child. Parents retain the right to be consulted on major decisions that concern the child such as changing the child's name.

Support for the Special Guardian

The Local Authority must make arrangements for the provision of special guardianship support services. Local authorities are required to make a range of support services available in their area to meet the needs of people affected by special guardianship. Special guardianship support services are defined as:

- Financial support.
- Services to enable groups of children for whom a special guardianship order is in force or in respect of whom is being formally considered, special guardians and prospective special guardians, and parents of the child to discuss matters relating to special guardianship.
- Assistance, including mediation services, in relation to contact between the child and their parents or relatives or any other person with whom the child has a relationship that the local authority considers to be beneficial to the welfare of the child.
- Therapeutic services for the child and assistance for the purpose of ensuring the continuance of the relationship between the child and his special guardian or prospective special guardian, including training for the special guardian or prospective special guardian to meet any special needs of the child; respite care; and mediation in relation to matters relating to special guardianship orders.
- Counselling, advice and information.

Who can apply for a Special Guardianship Order?

A special guardian must be over 18 years old and cannot be the parent of the child.

The people who may make an application to the Court without leave are as follows:-

1. Any guardian of the child.
2. Any individual in whose favour a residence order is in force with respect to the child.

3. Any person with whom the child has lived for a period of at least 3 years (which need not be continuous but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application).
4. If there is a residence order in force, any person who has the consent of each person in whose favour the residence order is made.
5. Any person where the child is in the care of the local authority who has the consent of that authority.
6. Any person (if there is no residence order or care order in force) who has the consent of each person who has parental responsibility for the child.
7. A relative with whom the child has lived for a period of at least one year immediately preceding the application.

Any other person may apply for a special guardianship order but will have to obtain leave of the Court before he/she can do so.

How does the court decide?

When considering whether to make a special guardianship order, the court will apply the principle that the child's welfare is the most important consideration. The court will also need to consider what is known as the "welfare checklist" in respect of the child. The welfare checklist consists of the following factors:

1. The ascertainable wishes and feelings of the child (in light of his age and understanding).
2. The child's physical, emotional and educational needs.
3. The likely effect on the child of any change in his circumstances.
4. The child's age, sex, background and any characteristics of his which the court considers relevant.
5. Any harm which the child has suffered or is at risk of suffering.
6. How capable each of the child's parents (and any other person in relation to whom the court considers the question to be relevant) is of meeting his needs.
7. The range of powers available to the court under the Children Act 1989 in the proceedings in question.

The court will also have regard to what is known as the "no order" principle. This is the principle that the court should make no order unless it considers that doing so, would be better for the child than making no order at all.

When making a special guardianship order, the court must also consider the question of contact between the child and his parent or other significant people in his life. The court can either approve contact arrangements that have been agreed between the parties or, can make an order as to contact.

If subsequently contact arrangements are not satisfactory and not in the child's best interests, it may be possible for the parent or other significant person to make a further application to the court to deal with the question of contact.

Support services

The Local Authority should make arrangements to provide support services for people affected by special guardianship. Often the services are provided to the special guardian by the Local Authority or other organisations on their behalf. The services provided by the Local Authority will depend upon the individual circumstances of the case but typically include means tested financial assistance for the special guardians, support with contact and where appropriate therapeutic services for the child.

Can a Special Guardianship Order be discharged?

A special guardianship order is intended to be a permanent long term order enabling the special guardian to care for the child until he or she is 18 years of age.

It is, however, possible to make an application for a Special Guardianship Order to be discharged but a parent or guardian or the child him/herself will only be able to make an application if the court gives them permission to do so. The court will only give such permission if it is satisfied that there is a significant change in circumstances since the special guardianship order was made. It is, therefore, the case that it will only be in exceptional cases that the court will be willing to discharge a special guardianship order.

If you would like further information about special guardianship, including how to make an application and whether or not it would be the best route to take in your particular case, please contact us.